

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

JONATHAN A. BLOOM,

Plaintiff,

v.

Civil No. 5:16-cv-121

ALEX AZAR,
Secretary of the U.S. Department of Health
and Social Services,

Defendant.

DR. BLOOM'S NOTICE OF SUBSEQUENT AUTHORITY

Dr. Bloom respectfully files this Notice of Subsequent Authority to bring to the Court's attention a decision issued by the United State District Court for the Eastern District of Wisconsin. In particular, on June 12, 2018 the Court in *Whitcomb v. Hargan*, Case No. 17-cv-14 (ED Wisc.) (Jones, J) issued a Decision and Order on Ms. Whitcomb's motion for fees under EAJA. *See* Exhibit A. The EAJA issues in the *Whitcomb* case are identical to the issues in Dr. Bloom's pending Motion for Fees and Costs. *See* Dkt. No. 53. Thus, the Court in *Whitcomb* addressed the same issue of whether the Secretary's position that a continuous glucose monitor ("CGM") is not "primarily and customarily used for a medical purpose" was substantially justified and whether, assuming EAJA fees were awarded, a "special factor" enhancement should be applied so that the fees are paid using the Parrish firm's usual and customary billing rates. As shown, the *Whitcomb* Court concluded that the Secretary's position was not substantially justified and also concluded that the Parrish firm's usual and customary rates were appropriate. Thus, the decision is relevant to Dr. Bloom's Motion for Fees and Costs – where the same issues are disputed.

Dated at Burlington, Vermont this 15th day of June, 2018.

JONATHAN A. BLOOM

By: /s/ Debra M. Parrish
Debra M. Parrish, Esq. (*pro hac vice*)
Bridget M. Noonan, Esq. (*pro hac vice*)
PARRISH LAW OFFICES
788 Washington Road
Pittsburgh, PA 15228
debbie@dparrishlaw.com
bridget@dparrishlaw.com

By: /s/ Craig S. Nolan
Craig S. Nolan, Esq.
SHEEHEY FURLONG & BEHM P.C.
30 Main Street, 6th Floor
P.O. Box 66
Burlington, VT 05402-0066
(802) 864-9891
cnolan@sheeheyvt.com

CERTIFICATE OF SERVICE

I, Craig S. Nolan, counsel for Jonathan A. Bloom, do hereby certify that on June 15, 2018, I electronically filed with the Clerk of Court the following document:

DR. BLOOM'S NOTICE OF SUBSEQUENT AUTHORITY

using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF parties:

Melissa A.D. Ronaldo, Esq.
Assistant United States Attorney
P.O. Box 570
Burlington, VT 05401
(802) 951-6725
Melissa.Ronaldo@usdoj.gov

Dated at Burlington, Vermont this 15th day of June, 2018.

By: /s/ Craig S. Nolan
Craig S. Nolan, Esq.
SHEEHEY FURLONG & BEHM P.C.
30 Main Street, 6th Floor
P.O. Box 66
Burlington, VT 05402-0066
(802) 864-9891
cnolan@sheeheyvt.com